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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,206	06/13/2000	RONG FU WANG	2026-4269US1	1577

45733 7590 05/18/2005

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EXAMINER	
BLANCHARD, DAVID J	

ART UNIT	PAPER NUMBER
1642	

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/529,206	Applicant(s) WANG ET AL.	
	Examiner David J. Blanchard	Art Unit 1642	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: *13-15, 28-29, 70-71, 73-77, 83-85 and 89-91*.

   Claim(s) rejected: *3, 5-8, 10, 12, 26, 67-69, 72, 87-88 and 92-103*.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 5. Applicant's reply has overcome the following rejection(s): If, if, if enetered the reply would overcome the rejection of claims 3, 5-8, 10, 12-15, 26, 67-77 and 87 under 35 U.S.C 112, second paragraph for indefiniteness and the rejection of claims 28-29 and 83-85 as anticipated by Chen et al.

Continuation of 11. does NOT place the application in condition for allowance because: The reply filed 5/10/2005 introduces new matter into the claims. The claims now recite any functional variant of a cancer peptide consisting of amino acids 127-136 of SEQ ID NO:4, which is not supported by the disclosure as-filed. Additionally, the generic disclsoure at page 9 of unspecificed cancer peptides and portions of SEQ ID NO:4 having at least 85% sequence homology with SEQ ID NO:4 deos not adequately support the specific variant portions of SEQ ID NO:4 of the present claims. Further, it is unclear if the variant peptide consisting of amino acids 127-136 of SEQ ID NO:4 has at least 85% sequence identity with amino acids 53-62 of SEQ ID NO:4 as recited in the claims. There is a lack of antecedent basis for "the cytotoxic T lymphocytes" in claim 5 and claim 87 still recites that the cancer peptide is "about 10 amino acids in length".

With respect to the written description rejection, the claims still encompass homologous sequences of SEQ ID NO:4 from other mammalian sources, and the specific variant sequenecs desclosed in Tables 6-7 are insufficient to support the broader genus encompassed by the present claims. Conception does not occurr unless one has a mental picture of the structure of the molecule, or is able to define its method of preparation, its physical or chemical properties, or whatever characteristics sufficiently distinguish it.

With respect to the new matter rejection, the rejection is maintained essentially for reasons of record. The scope of the claims extends beyond what is disclsosed in the instant applciation as-filed. Again, the longest peptide in table 7 is 15 amino acids in length, wheras the claims are drawn to peptides that are at least 17 or 19 amino acids in length. Further, which peptide in Table 6 or 7 is 85% identical with amino acids 53-62 of SEQ ID NO:4? The examiner acknowledges that possession of the invention is not so much the test for the written description requirement as it is a statement of a purpose of the requirement. The response states that the claims have been amended to exclude functionally equivalent variants of amino acids 127-136 of SEQ ID NO:4, however, the claims still recite that the cancer peptide can consist of amino acids 127-136 of SEQ ID NO:4 or a functionally equivalent variant thereof.

With respect to the enablement rejection, the rejection is maintained essentially for reasons of record. The claims encompass a sunbstantial number of variant sequences and the specification does not provide sufficient guidance or direction to assist the skilled artisan in the selection of the encompassed varaint cancer peptides commensurate in scope with the claims. At best the specification can be used as a guide to attempt discover which of the numerous cancer peptides encompassed by the broad claims would have the recited function. One of ordinary skill in the art would not have a reasonable expectation of success in such an endeavor in view of the art of record and the data presented in Tables 6 and 7 of the instant specification evincing that only 41% (19 of 41) of the peptides tested stimulate CTL activity. The response filed 5/10/2005 supplies new evidence (art of Gill et al and Estaquier et al) not previously considered and requires further consideration. Applicant has not provided a showing of good and sufficient reason why the evidence is necessary and was not presented earlier. See 37 CFR 1.116(e).

LARRY R. HELMS, PH.D
PRIMARY EXAMINER